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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

6365 FOURTH AVENUE CORP. and
11 FOREST AVENUE CORP.,
Debtors.

Chapter 11
Lead Case No. 19-23948(rdd)
(Jointly Administered)

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6365 FOURTH AVENUE CORP.,

Plaintiff,
-against-

Adv. Pro No. _____

1237 DEAN STREET CORP. and
EVERTON PIERRE,

Defendant.

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ADVERSARY COMPLAINT

Plaintiff, 6365 Fourth Avenue Corp., the above-referenced Plaintiff/ Debtor and Debtor-in-Possession, by Kirby Aisner & Curley LLP, its attorneys, complaining of defendants 1237 Dean Street Corp. (“Dean Corp.”) and Everton Pierre (“Pierre”)(Dean Corp and Pierre are collectively referred to as “Defendants”), alleges:

A. BACKGROUND

1. On or about November 4, 2019, the Debtor filed a voluntary petition for reorganization pursuant to Chapter 11 of Title 11 of the United States Code, and an order for relief was entered therewith.

2. Pursuant to Sections 1107 and 1008 of the United States Bankruptcy Code (the “Code”), the Debtor is authorized to continue conducting its business as a debtor and debtor -in-

possession.

3. No trustee, examiner or committee has been appointed in this Chapter 11 case.

B. JURISDICTION AND VENUE

4. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 (b) and 1334 (b).

5. This is a core proceeding pursuant to 18 U.S.C. § 157 (b) (2) (A) (E) and /or (O)

6. Venue in this district is proper pursuant to 28 U.S.C. § 1408 and 1409.

FACTS

C. THE PARTIES

7. The Debtor is a New York limited liability company organized and existing in the State of New York.

8. The Debtor is a holding company for real estate and real estate related assets, including the mortgage loan upon which this action arises.

9. Defendant 1237 Dean is a corporation formed under the laws of the state of New York. 1237 Dean is the owner of a multi-family property located at 1237 Dean Street, Brooklyn, New York (the “Property”).

10. Upon information and belief, Pierre is an individual who transacts business in the State of New York.

D. THE NOTE AND MORTGAGE

11. On or about October, 2018, 1237 Dean, as borrower, executed a Mortgage Note (the “Note”) in the amount of \$40,000 in favor of and delivered to Prius V Investment Trust (“Prius V”), as lender. A copy of the Note is annexed hereto as Exhibit “A” and made a part hereof.

12. The Note provided, *inter alia*, for the repayment of the loan, commencing on

November 5, 2018 and continuing in consecutive monthly payments of interest only, calculated at twenty-four (24%) per annum, through and including October 5, 2020, at which time the entire principal balance shall be due.

13. The Note was secured with a subordinate mortgage (“Mortgage”) granted to Prius V on the Property and the obligations under the Note and Mortgage were personally guaranteed by Everton Pierre, principal of 1237 Dean.

14. 1237 Dean defaulted under the Note by virtue of its failure to remit the initial payment due under the Note on November 5, 2018 and each and every payment due thereafter.

15. Prius V subsequently assigned all of its right, title and interest in and to the Note and underlying Mortgage to the Debtor.

FIRST CAUSE OF ACTION AS AGAINST 1237 DEAN

16. Plaintiff Street repeats and realleges each allegation set forth in Paragraphs “1”-“15” herein with the same force and effect as if herein set forth in full.

17. 1237 Dean has breached its obligations to Plaintiff under the terms of the Note by virtue of its failure to make the required payments due thereunder.

18. By reason thereof, there is due to Plaintiff the sum of \$40,000 in unpaid principal plus accrued interest in the amount of \$14,281.40 through March 31, 2020, late fees at 6% and continuing interest in the amount of \$26.30 per diem.

SECOND CAUSE OF ACTION AS AGAINST PIERRE

19. Plaintiff repeats and realleges each allegation set forth in Paragraphs “1”-“18,” herein with the same force and effect as if herein set forth in full.

20. Pierre has breached his obligations to Plaintiff pursuant to his personal guaranty by virtue of his failure to remit the amounts due under the Note upon the default of 1237 Dean.

21. By reason thereof, there is due to Plaintiff the sum of \$40,000 in unpaid principal plus accrued interest in the amount of \$14,281.40 through March 31, 2020, late fees at 6% and continuing interest in the amount of \$26.30 per diem.

THIRD CAUSE OF ACTION AS AGAINST DEFENDANTS

22. Plaintiff repeats and realleges each allegation set forth in Paragraphs "1"-“21,” herein with the same force and effect as if herein set forth in full.

23. The Mortgage expressly provides for the Plaintiff's right to recover all costs and expenses associated with the enforcement of the Plaintiff's rights under the Note and Mortgage.

24. Pursuant to the terms of the Note, Mortgage and personal guaranty by Pierre, the Plaintiff hereby demands recovery of all costs of enforcement including but not limited to reasonable attorneys' fees and costs associated therewith, in an amount to be determined by the Court.

WHEREFORE, Plaintiff demands judgment against Defendants in the amounts set forth herein, together with such other and further relief that the Court deems just and proper.

Dated: April 10, 2020
Scarsdale, New York

KIRBY AISNER & CURLEY LLP
Attorneys for Debtor/ Plaintiff

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